IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7385 of 2007()

CRIME NO.716/07 OF VAIKKOM POLICE STATION

PETITIONERS/A1 TO A3

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1. THANKAPPAN S., AGED 64, S/O. SANKU, "KAILASH", RAJEEV NAGAR, ELAMAKKARA, KOCHI.

2. PUSHPAVALLY THANKAPPAN, AGED 59, W/O. THANKAPPAN, "KAILASH", RAJEEV NAGAR, ELAMAKKARA, KOCHI.

3. JYOTHIPRAKASH, AGED 32, S/O. THANKAPPAN, "KAILASH", RAJEEV NAGAR, ELAMAKKARA, KOCHI.

BY ADV. SRI.C.P.UDAYABHANU
SRI.T.ANIL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE S.I. OF POLICE, VAIKKOM POLICE STATION, (CRIME NO.716/07) REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.7385 OF 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3. Accused 1 and 2 are the parents of the 3rd accused. Accused No.3 is the owner of an item of property. On the strength of a Power-of-Attorney executed by the 3rd accused in favour of his father - 1st accused, accused 1 to 3 had entered into a transaction for sale of immovable property with the de facto complainant. Advance was received by the 1st accused from the de facto complainant. But with dishonest intention, the agreement was not abided by. The sale deed has not been executed. On this allegation, a private complaint was filed and the same was referred to the police under Sec.156(3) of the Cr.P.C. A crime has been registered. Investigation is in progress. The petitioners apprehend

imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent and that even if the entire allegations were accepted, what is revealed is a dispute regarding specific performance of an agreement for sale. There is absolutely no elements of the offence of cheating, submits the learned counsel for the petitioners.

3. The learned counsel for the petitioners prays, the learned Public Prosecutor does not oppose the said prayer and I am satisfied, in the facts and circumstances of this case, that the petitioners can be granted anticipatory bail. In the absence of opposition, it is not necessary to advert to the facts in any greater detail in this order.

4. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 7/12/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m.

and 1 p.m. on 8/12/07and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 7/12/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 7/12/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge